Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Redevelopment of Spectrum	)	
to Encourage Innovation in	)	
the Use of New	)	ET Docket No. 92-9
Telecommunications	)	RM-7981
Technologies	)	RM-8004
	)	

AT&T'S OPPOSITION TO PETITION FOR RECONSIDERATION

Pursuant to the Commission's Public Notice dated October 22, 1993, American Telephone and Telegraph Company ("AT&T") hereby opposes the Petition for Reconsideration filed by Apple Computer, Inc. ("Apple") on September 13, 1993.[1]

Apple petitions for reconsideration of the spectrum transition plan set forth in the Commission's Third Report and Order and Memorandum Opinion and Order in ET Docket No. 92-9.[2] Specifically, Apple urges (pp. 1-2) the Commission

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[1] Contemporaneously with the filing of this Petition, Apple also filed an Emergency Petition in GEN Docket 90-314, RM-7140, RM-7175, RM-7618, which seeks spectrum allocation to support the transition plan set forth in its 92-9 reconsideration petition. Apple's Emergency Petition relies on the same claims made in this petition; thus, for all the same reasons set forth herein, AT&T opposes Apple's Emergency Petition.

[2] In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technology, 58 Fed. Reg. 46547 (Sept. 2, 1993) ("Third R&O").

to find that no "nomadic PCS technologies, such as Data-PCS" may be deployed until the entire band is completely clear.[3] Apple also asserts (p. 3) that its frequency optimization plan for the 2 GHz frequencies should be adopted as the transition plan to be implemented because it is cheaper and more efficient than the Commission's plan. Finally, Apple requests (pp. 11-12) that tax certificates be made available to incumbents relocated from the unlicensed band as they were for those moving from the licensed band.

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[3] Apple attempts to label all Data-PCS devices as "nomadic" and all devices that can be coordinated as "non-nomadic." The Commission never distinguished between types of data devices, but only between data and voice PCS. Thus, Apple incorrectly implies that all Data-PCS devices must by definition be devices that can not be coordinated (id. at p. 2). Data-PCS, however, as that term is commonly used in the industry, and by the Commission when it allocated frequencies, includes all unlicensed data technologies. Moreover, the Commission specifically stated when it granted an additional 10 MHz to Data-PCS that the kinds of unlicensed applications that would be permissible under this allocation [1910-1930 MHz] would include, but not be limited to, high and low speed data links between computing devices. In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, Second Report and Order, GEN Docket No. 90-314, RM-7140, RM-7175, RM-7168, released October 22, 1993. Therefore, Apple's attempt to push Data-PCS devices that can be coordinated out of the 1910-1930 MHz band is entirely improper and restricts deployment of a large number of unlicensed data devices, which would then have to attempt to fit into the highly-congested voice-PCS band.

Apple's petition is nothing more than an improper attempt to reargue matters which the Commission disposed of in its Third R&O. Apple's petition provides no new facts or arguments that would justify reconsideration of the Order, and "[i]t is well settled that reconsideration will not be granted merely for the purpose of again debating matters which the Commission has deliberated upon and resolved."[4] Rather, Apple raises claims that have already been considered and properly rejected by the Commission.

AT&T agrees that ultimately, spectrum must be clear of all fixed microwave incumbents for the viable long-term use of unlicensed devices capable of operating anywhere in the country. AT&T, however, disagrees with Apple's position that no spectrum allocated for unlicensed technologies should be made available until every single microwave incumbent has relocated from that portion of the band. Under this approach, all Data-PCS devices, including those that can be coordinated, would be prohibited from using any portion of unlicensed spectrum, which might

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[4] Walton Broadcasting, Inc., 83 F.C.C.2d 440 (1980) (footnote omitted). See also MTS and WATS Market Structure, Amendment of Part 67, 2 FCC Rcd 4533 (1987); American Broadcasting Companies, Inc., 90 F.C.C.2d 395, 401 (1982); ITT World Communications Inc., 90 F.C.C. 2d 784, 785 (1982) (where the Commission denied a petition for reconsideration because petitioners failed "to raise any fact, argument or language which ha[d] not already been carefully considered by this Commission").

become available due to regional clearing or frequency coordination with remaining incumbents, until "the 'last link' has been moved from the affected frequencies" (Apple, p. 2), even though such use would cause no interference.

Apple's only stated objection (pp. 2-3) to this proposal is that it would allow devices that can be coordinated to occupy all of the unlicensed frequencies before devices that are unable to be coordinated can be introduced.[5] This argument is without merit because the Commission adopted spectrum sharing rules that require unlicensed devices to scan for an open channel before transmitting.[6] The requirement to "look before talking" applies to all unlicensed devices, regardless of the length of time the devices have been deployed. Spectrum is never "occupied" by unlicensed devices. Indeed, that is the very reason why unlicensed spectrum users are unable to participate in auctions and should be set apart from the licensed spectrum users.[7] Thus, Apple's petition raises no

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[5] See Third R&O at ¶ 30. See also, UTAM's "Report and Recommendations," filed on May 14, 1993.

[6] See In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket 90-314, Memorandum, Opinion and Order, Appendix, p. 7, subpart D, Rules 15.319-15.323, released October 22, 1993.

[7] See In the Matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technology, First Report and Order

(footnote continued on next page)

new issues that have not already been addressed by the Commission.

In addition, Apple's request to prohibit unlicensed spectrum use until the band is entirely cleared is directly contrary to the Commission's determination to expedite the delivery of emerging technologies to the marketplace.[8] The interim marketing of devices that can be coordinated not only accelerates delivery of PCS to the public, but also generates funds to relocate microwave incumbents and ensure the financial viability of unlicensed devices.[9] Thus, unlicensed devices that can be coordinated

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(footnote continued from previous page)

and Memorandum Opinion and Order, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992).

[8] The Commission anticipates that it will take at least three years to reach voluntary or involuntary agreements with the existing licensees and to move their facilities. Third R&O at ¶ 23; see, the Commission's Master Frequency File for a listing of current assignments in the 2 GHz band. Thus, emerging unlicensed technologies would be withheld from the public for at least three years, if not more, despite the fact that there is much that could be deployed today -- if some spectrum were available.

[9] Moreover, the Unlicensed PCS Ad Hoc Committee for 2 GHz Microwave Transition and Management ("UTAM") proposed workable mechanisms to protect existing incumbents from harmful interference from emerging unlicensed technologies, and the rights of those incumbents to full cost compensation and comparable alternative facilities upon relocation. See, Reply Comments of UTAM, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket 90-314, ET Docket 92-9, filed July 20, 1993.

should be allowed to use spectrum in the unlicensed band as it becomes available without waiting until the entire spectrum is clear.

Once again, without raising any claims that have not already been considered, Apple asks (p. 4) the Commission to reconsider the rejection of its proposal to relocate incumbent microwave licensees in the 2 GHz band allocated for unlicensed devices to another portion of the 2 GHz band by using other portions of the frequency band, i.e., retuning. Apple urges (p. 11) the Commission to require this retuning of all existing microwave facilities within the 2 GHz band to ensure the development of nomadic technologies. This is simply not true.[10]

Apple's petition raises no new facts or arguments that would justify reconsideration of Apple's transition plan. The Commission rejected Apple's retuning proposal when it considered it the first time, "since in most cases the incumbent licensee could ultimately be required to move to another band."[11] Other parties, including the Utilities Telecommunications Council, also opposed Apple's approach, primarily because it might

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[10] Indeed, Apple contradicts its own assertion when in the same Petition it professes that the "computer industry . . . has wireless product ready to market and is awaiting only the frequencies" (id. at p. 3).

[11] Third R&O at ¶29.

require additional relocation by a new service licensee authorized to use that spectrum.[12] The Commission agreed that such additional relocations would increase the overall cost of relocating by burdening incumbents with two relocations instead of one.[13]

Moreover, the Commission has determined that even the retuning process required for incumbent public safety facilities is not permitted until all the 2 GHz licensees have been assigned their spectrum, and the written consent of any affected 2 GHz licensee has been obtained.[14] Thus, Apple's retuning proposal would only unnecessarily delay the deployment of unlicensed emerging technologies into the marketplace. Apple has provided no new information that

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[12] Id. at ¶28; Utilities Telecommunications Council ("UTC"), ET Docket 92-9 at p. 24; American Personal Communications ("APC"), ET Docket 92-9 at pp. 8-9. The Commission did require retuning for exempted public safety facilities, however, to clarify that although they may stay within the 2 GHz band, they may not necessarily remain at the exact frequency they currently occupy. Id. at ¶29. However, even there, the Commission emphasized that retuning could only occur "if an adequate showing is made that such a relocation will not adversely affect the operations of the public safety incumbent, or any other fixed microwave incumbent or emerging technology/PCS licensee."

[13] Id.

[14] Id. at fn. 38.

would warrant any reconsideration of the Commission's decision.[15]

Apple further asks (pp. 11-12) the Commission to clarify that incumbents who enter into voluntary agreements to relocate from either the licensed or unlicensed portion of the 2 GHz band are entitled to tax certificates. AT&T agrees.

The Commission authorized tax certificates for "any sale or exchange of property in connection with voluntary agreements for the relocation of fixed microwave facilities during the fixed two year period."[16] However, the Commission did not expressly authorize the issuance of tax certificates to fixed microwave licensees for negotiations completed during the one-year mandatory negotiation period with unlicensed emerging technology providers. Indeed, because there is no voluntary negotiation for a "fixed two year period" with respect to incumbents using frequencies allocated to unlicensed services, the Commission appears to

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[15] In particular, Apple does not address: (1) the technical feasibility of retuning numerous incumbents that rely on vintage equipment; (2) the availability of spectrum to "house" all the retuned facilities; and, (3) who should bear the costs incurred by not only the retuning, but also the subsequent relocation of retuned microwave licensees from PCS spectrum to other bands.

[16] Third R&O at ¶42.

have inadvertently limited tax certificates to fixed microwave licensees relocated from the licensed PCS band.[17]

Tax certificates guarantee that the sale or exchange of property will be treated as an involuntary conversion, receiving favorable treatment under the tax laws.[18] Thus, they will facilitate voluntary relocation agreements for fixed microwave incumbents in the unlicensed band, just as the Commission determined they would for those in the licensed band.[19] The Commission should clarify that they are available for incumbents that voluntarily move from the unlicensed band during the fixed one-year negotiation period.

CONCLUSION

For all the foregoing reasons, AT&T opposes Apple's transition plan and supports the transition plan adopted by the Commission. AT&T, however, agrees with Apple that tax

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[17] Petition, p. 12.

[18] 28 U.S.C. §1033.

[19] Third R&O, ¶42.

certificates should be available for incumbents relocating from the unlicensed portion of the band, just as they are for those relocating from the licensed portion of the band.

Respectfully submitted,

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November 8, 1993

CERTIFICATE OF SERVICE

I, Janice Knapp, hereby certify that a true copy of the foregoing "AT&T's Opposition To Petition For Reconsideration" was served this 8th day of November, 1993 by first-class mail, postage prepaid, upon the parties on the attached service list.

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